

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

WILLIAM A. ZELLMAR,

Plaintiff,

v.

WARDEN, GURNEY UNIT, et al.,

Defendants.

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Case No. 6:17-cv-386-JDK-JDL

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff William Zellmar, proceeding pro se, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge John D. Love for findings of fact, conclusions of law, and recommendations for disposition.

In February 2019, the Court dismissed this case without prejudice for failure to prosecute or to obey an order of the Court after Plaintiff failed to pay the initial filing fee. Docket No. 18. Plaintiff appealed and the Fifth Circuit vacated the judgment and remanded Plaintiff's case for further proceedings in June 2020. Docket No. 24. Following remand, the Magistrate Judge ordered Plaintiff to contact the Clerk and request issuance of summons. Docket No. 27. The docket indicates that Plaintiff received a copy of this order on October 28, 2020. Docket No. 28. Plaintiff has filed nothing further and has not otherwise communicated with the Court.

On February 2, 2021, Judge Love issued a Report recommending that Plaintiff's civil rights action be dismissed, without prejudice, for want of prosecution


and failure to effect service of process. Docket No. 29. A copy of the Report was sent to Plaintiff at his last known address, but was returned as undeliverable with the notation that Plaintiff had been discharged. Docket No. 30. TDCJ records indicate that Plaintiff was discharged from prison on November 2, 2020. To date, Plaintiff has not advised the Court of his current mailing address, further demonstrating a failure to prosecute his case.

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). Here, Plaintiff did not object in the prescribed period. The Court therefore reviews the Magistrate Judge’s findings for clear error or abuse of discretion and reviews his legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”).

Having reviewed the Magistrate Judge’s Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the

United States Magistrate Judge (Docket No. 29) as the findings of this Court. It is therefore **ORDERED** that this case is **DISMISSED**, without prejudice, for want of prosecution and failure to effect service of process. The statute of limitations for Plaintiff's claims is **SUSPENDED** for a period of ninety days following entry of final judgment in this case to allow Plaintiff reasonable time to refile if he so chooses.

So **ORDERED** and **SIGNED** this **2nd** day of **March, 2021**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE